IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2051 OF 2001

Ritu Sharad Nemani Applicant
versus
Vishwanath B. Goenka and anr. Respondents

Shri S.V.Marwadi for applicant.

Shri Vikas Vishwanath Goenka, Power of Attorney holder of respondent no.1 present in person.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd August 2006

PC :

1. The grievance in this application under section 482 of Code of Criminal Procedure is that the first respondent-wife had filed a complaint against the petitioner, her brother and father in the Court of learned Magistrate, First Class, at Bhivandi. The complaint alleges commission of an offence punishable u/ss.406 and 420 of IPC.. The Magistrate was pleased to forward the complaint to Inspector of Police, Nizampur Police Station u/s 156(3) of Cr.P.C.. The offence thereafter came to be registered and a charge sheet was filed in the Court. The case was thereafter

numbered as Criminal Case No.355 of 1998.

2. The applicant was advised to invoke the learned Magistrate's jurisdiction u/s 239 of Cr.P.C. and an application was filed for discharging her as also two others in the above case on 26th October 1998.

3. It is not disputed before me that the application was initially dismissed on 18th October 2000 inasmuch as the learned Magistrate proceeded to frame charges. The grievance is that the charges came to be framed without any orders being passed on the application for discharge. The matter was carried in revision to the Second Additional Sessions Judge, Thane, who by his order dated 4th July 2000 in Criminal Revision Application No.5 of 2000 directed as under:-

> "ORDER :
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> 1. The Revision petition is allowed and the order of the learned Magistrate framing charges against the accused persons is set aside and the learned Magistrate is directed to decide the application for discharge Exh.4 first after hearing both the parties and then proceed with further trial in the case in the light of such findings or decision on application Exh.4.

> 2. R & P of the concerned Criminal case be sent to the Court of concerned Magistrate immediately.
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> 3. The parties to appear before the learned Magistrate on 24th July 2000."

Upon the matter being remitted back, it was expected of the learned Magistrate to decide the application for discharge (Exh.4) before he proceeded to frame charges as directed under the order of Revisional Court reproduced above. Shri Marwadi makes a serious grievance that this order has not been challenged and had gained finality. In such circumstances, learned Magistrate was bound by the direction of Sessions Judge, and, therefore should have decided the discharge application.

4. However, the learned Magistrate instead of deciding the matter took cognizance of an application of the original complainant and issued a non bailable warrant against petitioner/ applicant for her alleged absence on the date fixed by the Trial Court. That application was allowed and non bailable warrant was issued on 18th October 2000. Thereafter, the matter was carried to the Revisional Court and the Revisional Court by its order dated 6th November

2000 framed a point of maintainability of the revision application and ultimately held that the revision application is not maintainable and dismissed the same on 11th May 2001.

5. According to Shri Marwadi, these orders are subject matter of challenge in this application. He submits that the applicant before this Court was duly represented by an Advocate engaged by her. The advocate had attended all dates of hearing. When the discharge application was to be heard before any other proceeding including framing charges, then it was not necessary for the applicant, who is a married lady, to remain present in person. The directions are misconceived and the approach is ex-facie erroneous in law. The Trial Court was bound by the direction of the Revisional Court and should have passed appropriate orders on the discharge application after hearing the applicant's advocate. In such circumstances, serious loss and prejudice is caused to the applicant and this Court must exercise its inherent powers and quash & set aside the order issuing non bailable warrant which in any event has been stayed for all these years. He submits that the applicant would remain present on the date fixed by this

Court and argue the discharge application on that date itself.

6. The complainant who is respondent no.2 before me, is represented by his Power of Attorney holder son. His submission is that this Court should not exercise its inherent powers and assist a litigant who has, all through out, delayed the proceedings before the Trial Court. He submits that filing of a discharge application is merely a ploy to delay the matter. The complaint is pending for all these years. In such circumstances, this Court should not interfere in the matter. However, he was agreeable to a direction being issued to the Trial Court for deciding the discharge application but this Court should also directs expeditious disposal of the criminal case itself.

7. After hearing both sides and perusing the application and the annexures thereto I am of the view that the learned Magistrate was in obvious error in not abiding by the directions issued by the Revisional Court which were final and remained unchallenged. Once the direction was to decide the discharge application in accordance with law and the applicant’s advocate was present

to argue the same, the learned Magistrate ought not to have insisted on the personal presence of the applicant. More so, when she is a married lady and is settled abroad after her marriage. It is not as if the applicant is not obliged to attend the case at all. Once appropriate orders are passed on the discharge application and the learned Judge proceeds with the case thereafter, then it is always open for him to secure presence of the accused. However, once in the facts and circumstances of this case, a clear direction was issued to proceed with the discharge application first, then the learned Magistrate should not have proceeded to issue a non bailable warrant. By this process, the litigants are put to unnecessary inconvenience and criminal cases are delayed endlessly. Ultimately, all such directions are issued to subserve the ends of justice and the learned Magistrate was bound by the directions of the Revisional Court.

8. Therefore, without entering into the larger controversy about maintainability of the revision application, in the facts and circumstances of this case, interest of justice would be subserved if the order dated 18th October 2000 which has been stayed all through out, is quashed and set

aside. The discharge application is restored to file. The applicant's advocate to remain present and argue the discharge application before the Trial Court on Monday, 11th September 2006. The Trial Court to hear the submissions of the advocate for the applicant so also the complainant and pass appropriate orders in accordance with law. In any event, the discharge application must be decided within a period of two weeks from 11th September 2006. All contentions of both sides are expressly kept open. No opinion is expressed by this Court thereon.

9. Needless to state that if the discharge application is dismissed and the learned Magistrate proceeds to frame charges, he shall endeavour to dispose of the criminal case within a period of six months from the date of framing of charges.

(S.C.DHARMADHIKARI, J.)